

## DIVIDED COUNSEL

### Jury Empaneling Episode in Court.

(From Thursday's Advertiser.)

The first criminal trial of the September term of the First Circuit Court resulted in an acquittal, P. O'Sullivan being found not guilty of permitting beer to be sold in his licensed saloon on a Sunday. It took the jury but a few minutes to reach their verdict, which was returned at 7 minutes before 5 yesterday afternoon.

There was an interesting clash of counsel for the defendant in the empaneling of the jury, as related briefly below, and the strange result occurred of a juror being excused for a cause that was not held good in another juror's case.

#### THE EMPANELING.

P. O'Sullivan was called for trial under indictment of permitting beer to be sold and drank in his licensed saloon on a Sunday. C. Creighton and Henry Hogan appeared for the defendant, and Mr. Hogan read objections to the calling of a jury from a notebook in his hand. The grand and trial jury panels were attacked and the jurisdiction of the court was denied. The plea was also made that defendant had been once in jeopardy.

Mr. Prosser briefly replied, saying that all objections were overruled at last term and besides that they should have been brought in form of some regular plea.

Mr. Creighton read the indictment to show flaws in it and the minutes of Judge De Bolt's hearings of the matter last term to contradict the prosecution's claim that nothing was now left but the trial by jury.

Judge Gear promptly overruled the objections, the defense excepted to the ruling and the calling of a jury began.

Mr. Prosser began to examine the twelve men first called to the jury box. The first three were all in a bunch, but as three of the panel almost simultaneously broke out with excuses he concluded he would have to take the jury men one at a time. Mr. Hummell said he was not a registered voter and, when J. A. M. Johnson said he missed registration by absence, Mr. Hummell went on to give the additional excuse that he was a member of the grand jury that indicted the defendant last term. W. M. Campbell chimed in that he was also a member of that grand jury.

Campbell, the first examined formally, was excused on the grand jury point, as was C. R. Collins, but W. H. Babbitt, another grand juror who helped to indict O'Sullivan, was retained on that point though excused for a fixed opinion on the case. This contradictory dealing with the point relating to the grand jury was caused by the raising of an objection by Mr. Hogan in Babbitt's case after the other two jurors had been excused for that cause. Mr. Prosser would not press a challenge for cause since the defendant's counsel objected.

Hummell's turn came next, in a regular way, and he repeated his excuses—that he was not a registered voter and that he served on the grand jury. Mr. Creighton challenged him for cause on the grand jury proposition, going directly contrary to his associate counsel in Babbitt's case.

Judge Gear here interposed and said defendant's counsel ought to agree on one thing or another.

Mr. Creighton said the empaneling was in his charge.

Mr. Prosser said they could save exceptions both ways by their conduct.

Mr. Creighton replied that the idea of shying in the matter originated in the brain of the Assistant Attorney General.

Judge Gear remarked that defendant's counsel had furnished appearances to give foundation for such a surmise. Mr. Prosser stated that Mr. Creighton, when the question about the grand jury was mooted to him, poolpoohed the idea of one man being qualified to serve as a grand and trial juror in the same case.

The court excused Hummell. J. A. M. Johnson's case brought up the question of registered voters. Judge Gear wanted to hear argument on it. Mr. Prosser thought it had been ruled on. Mr. Creighton held that registration was not a qualification for voting but a condition. Mr. Prosser said the Supreme Court had shied at the question. Johnson was passed for cause, but the contest was later renewed when E. Kaai was called. He was of age, but had never registered nor voted.

Mr. Prosser called attention to the Supreme Court's decision in the case of Geo. H. Fairchild vs. Board of Registration. The decision referred to the Organic Act as making registration a qualification of a voter.

Judge Gear, after looking over the citation, said the Supreme Court had not decided the point. He asked if the defendants objected to a challenge for that cause. Mr. Creighton answered in the negative.

Mr. Prosser stated that his sole object was to obtain duly qualified jurors. He would not challenge where the defendant was satisfied a juror was qualified. Neither had he any peremptory challenges to offer as the jury was then constituted.

Mr. Creighton challenged E. P. Chapman in peremptory and another name was called.

Again Mr. Prosser accepted the jury for the prosecution and the defense having no more challenges the following jury was sworn to try the case:

James Brown, John C. Lane, J. A. M. Johnson, J. W. Johnson, H. P. Roth, Ernest Kani, Joseph J. Diaz, G. H. Mahone, C. A. M. Johnson, Harry Carl, John D. Craig, Geo. Dillingham.

(Continued on Page 2)

## OPENING FIGHT OF THE GREAT BATTLE SERIES AT LIAOYANG

(Mail Special to Advertiser.)

LIAOYANG, Aug. 29, 10 a. m.—From five o'clock this morning until 9 o'clock there has been an incessant shower of shrapnel. The heaviest cannonading is coming from the southeast, where the Japanese evidently have numerous guns. Deadly shells are bursting everywhere, their white smoke being distinctly traceable against the dark foliage of the mountain sides. The Japanese are searching the whole country side with their fire, selecting certain squares of territory on which for a few moments they mass a hail of shot and shell from all their guns. They then pass to another square, thus working the whole field, with mathematical precision, from right to left. In this way the entire Russian front has been systematically searched in the first four hours of the cannonading.

Then commenced the general Japanese advance along the whole line. At this hour (10 a. m.) the Japanese artillery fire has somewhat slackened, but their infantry is steadily pushing forward.

The Russians have been holding their ground gallantly and their losses are small, considering the terrible nature of the Japanese fire.

#### DETAILS OF OPENING FIGHT.

ST. PETERSBURG, Aug. 29, 2:32 p. m.—The long-expected battle at Liaoyang has begun, and the two armies are now fighting what probably will prove to be the decisive battle of the campaign. The Japanese armies are attacking General Kuropatkin's forces upon his chosen ground and his friends and admirers here are confident that, having accepted a general engagement, he will defeat the Japanese.

In a brief telegram received this morning, Kuropatkin says the general advance of the Japanese began yesterday at noon, the Russian outposts falling back upon the mainland. The heaviest fighting was taking place, when his dispatch was sent, from a point ten miles southeast of Liaoyang, where the Japanese seemed to be concentrating for their main battle. The Russians suffered principally from the shrapnel fire of the Japanese artillery. The Japanese selected the Mikado's birthday for the decisive battle, and it will not be surprising if today is also signalized by a grand assault on Port Arthur.

The Russian forces are disposed at Liaoyang to meet the onslaught of the three Japanese armies described in these dispatches yesterday. A telegram from Kuropatkin, which gives this information, together with the details of the retirement of the Russian troops upon Liaoyang, has not been out for strategic reasons. The combined armies of Generals Kuroki, Oku and Nodzu probably exceed 200,000 men. Their forces are considerably superior in numbers to General Kuropatkin's, but the Russian commander-in-chief probably relies upon the strength and character of his position to overcome the disparity in numbers.

The War Office is waiting with breathless anxiety for news of the progress and issue of the battle on which so much depends.

#### GERMAN ADVICES.

BERLIN, Aug. 30.—A dispatch from Liaoyang to the Lokal Anzeiger, timed 9:25 a. m. today, says:

"What appears to be the deciding battle began at 4 a. m. Since then the artillery has been thundering and rifle fire has been rolling incessantly. The encircling heights resemble fire-emitting mountains. The Japanese began the attack east of Liaoyang along the Taitsze river, but were repulsed."

"The firing is now specially heavy

south and southwest of Liaoyang. One can no longer distinguish individual detonations. The Wyborg regiment, of which Emperor William II. is honorary chief, is deploying upon the battlefield. The Russian army is full of confidence.

"The total strength of the combatants engaged is estimated at over half a million men. The battle probably will continue for several days."

#### HAND-TO-HAND FIGHTING.

LIAOYANG, Aug. 29, 6:49 p. m.—The battle is growing in intensity. The Japanese fire is chiefly directed on the Russian southern contingent. The Japanese advance was pressed with such vigor that it developed into hand-to-hand fighting. The Twenty-third regiment repelling an attack at the point of the bayonet. One of the Japanese batteries was dismantled.

Wounded men have been pouring in to Liaoyang since 8 o'clock this morning, mostly hurt by shrapnel shells, and some by rifle bullets. The heights of Mae Tung, near the railroad, have been shored with projectiles.

#### BEFORE THE BATTLE.

LIAOYANG, Aug. 29.—(Delayed in transmission.)—Throughout August 27 and 28 the Russian eastern divisions continued to fall back in good order on Liaoyang, but the movement was slow on account of bad roads, and the difficulties of transportation, and the Japanese pressed closely several times with light batteries, dragging guns to the hills and shelling the troops whose retirement was covered by Russian guns. Consequently there were frequent artillery duels.

General Marson was wounded and there were other losses of about 250 men. The Japanese scouts are extremely active today (Monday). Rain is falling, but the rumble of artillery can still be heard on the eastward.

The Russian retreat from Anshan-shan was ordered for strategic reasons, practically no resistance being offered. A light screen of batteries facing the Japanese guns beautifully disposed on a chain of hills masked the withdrawal of the main force. When night fell the batteries also took up the retreat, their rear guard lighting bivouac fires to conceal the movement. But the Japanese soon discovered this ruse and pressed forward, coming up with the Russian rear guard Sunday morning. For an hour the light batteries were hotly engaged. To the lot of the Omsk, Tobolsk and Krasnovarsk regiments fell the duty of covering the retreat of General Zaroubaiev's Fourth Siberian army corps. The task was difficult, as the enemy continued to advance, displaying light mountain guns against the Russian rear and left flanks, and it was imperative that the enemy should be held back to permit the removal of the baggage and artillery trains. The trails were washed out and heavy with mud produced by the deluge of rain preceding Friday. Many guns were mired and the horses exhausted. Cossacks and infantrymen were harnessed to the guns and managed to haul them along. It was slow work, but was successfully accomplished. The greatest difficulty of the retirement on the east front was experienced before Vanbantian pass, where it was necessary to hold the Japanese in check until the artillery transport passed through, and also to keep in touch with the Tenth Army Corps, commanded by General Horschelmann, to the north, as well as with the Southern division, in order to prevent a turning movement.

From dawn until dark, the Eastern troops, although fatigued by four days' fighting, sustained a rear-forward action.

ern portions of the United States, there is no effort made to evade sending them to school. So the work of education progresses steadily. The English language is being mastered by the young, love for the stars and stripes is being inculcated into their hearts, insuring for the Territory a coming race of true Americans. When one stops to consider that the superstitions of the ancient Hawaiians still hold sway in many families, the work of the teachers would seem to be quite difficult, if not discouraging. To think that strange customs, such as the beating of a sick man on the head with a Bible to drive out evil spirits, prevail in this age is by itself discouraging, but these fallacies are pointed out effectively to the young, and it is safe to say will disappear with the present generation.

Of especial importance to the Hawaiian Territory are the free kindergartens, of which there are an even dozen, with over six hundred little ones enrolled, chiefly of foreign-born parentage.

Teachers, especially qualified for this particular work have been secured from various States of the Union. Some strange cases of childish misery and neglect are brought to their notice. One child in particular has three brothers and sisters. Most of the care they receive she gives them, for they are incumbered with a bad, dirty, lazy, ignorant mother. The physicians engaged by the kindergartens save many children from the cruel and absurd treatment which ignorant parents, many brought up under the most marvelous superstitions, often resort to. Through all the kindergartens work the little ones are reared on the American plan, and to this excellent training is due in part the encouraging progress of the public schools to which they advance.

Ah Wong, an Americanized Chinese man of prominence in Honolulu, says of the children of his own race: "They are the shyest of all, often crying for several days upon entering the school, and sisters or little mother-girls for weeks before they feel at home in the new surroundings. Once acquainted, however, they are the most devoted and regular in attendance. Even at this early age they are eager to work and learn, but are often too old to play, laughing at the silly stunts and games of the other children. It is some time before they can lose themselves in a game, but after a while they become as playful as American children. A few weeks of this training and the young Chinaman is no longer content to sit on the door-step and look into space for hours at a time, or walk sedately back and forth on the

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## GLIMPSES FROM THE INSIDE OF THE PORT ARTHUR INVESTMENT

(Mail Special to Advertiser.)

CHEFOO, Aug. 26, 7 p. m.—The Port Arthur "Novokrai" in its issue of August 26th, speaking of the incidents of the siege occurring between August 22 and August 26, makes no mention of any general assault during that period, but records several desperate attacks on the Russian positions.

The Russian Consul at Chefoo says the "Novokrai" relates only facts, but colors them with the intention of inspiring the garrison and inspiring the troops to the emulation of heroic deeds.

Following a grand three days' assault on the defenses of Port Arthur the Japanese rested during the day-time of August 25. At eleven o'clock that night they concentrated a strong force to attack the Zaredouti fort, which is a strong position on the Russian right flank. The Japanese made clever use of the available cover creeping forward in the Indian fashion for one hour in spite of the Russian rifle fire. Midnight found them properly formed within striking distance of the fortifications. They then made a powerful rush, but were mowed down in all but one quarter. Here a body of Japanese succeeded in entering the fort over the dead bodies of their comrades, but nearly all were bayoneted inside the fort.

The remnant retreated, losing severely as they fled. After repulsing the enemy the Russian troops cheered.

The Japanese searchlights showed ghastly heaps of dead, like magic-lantern pictures.

The Japanese soon were reinforced and recommenced the attack furiously, but again they were repulsed. The "Novokrai" soberly asserts that the Japanese troops were forced forward by their own shrapnel fire, the guns being placed behind them to prevent a retreat.

A third attempt to capture the position also failed, and anticipating a fourth attack the Russians were reinforced, but this fourth attack was not made.

The Zaredouti fortification presented to the Japanese a high stone wall of Chinese construction, and the fact that one detachment succeeded in scaling it is accounted marvelous.

Daylight found the belligerents in that quarter engaged in an artillery duel. General Gorbatsowsky personally directed the Russian fire, although he had been six days and six nights without sleep. The fort suffered considerably from the Japanese artillery and General Gorbatsowsky ordered the garrison into undamaged trenches.

The next glimpse the Russians had of the Japanese was at ten o'clock on the morning of August 24, when a mountain battery on mules was seen in motion. The Russians opened fire on this battery and dispersed it. At noon of the 24th two Japanese columns were observed, one behind Sugarhead Hill and the other near the railroad bridge, but they retired when the Russian artillery opened on them.

At 2 o'clock in the afternoon of the 24th the Japanese began a heavy bombardment of the Russian position with their one hundred and twenty millimeter guns, and at the same time a Japanese column of infantry and cavalry appeared at Palichuang. At 6 o'clock that afternoon the Japanese furiously attacked the entire northeastern front of the Russian defenses, but they were compelled to retire with considerable loss.

The foregoing is an account of the

battle mentioned in these despatches yesterday as having occurred on Aug. 24. Whether the fighting which presumably did occur on the 26th was a separate attack or whether the Chinese who reported the occurrence were inaccurate in their dates cannot be determined.

The night of August 24 was quiet. On the morning of the 25th the Japanese artillery opened up along the entire eastern front, but most severely on the northern section.

During the night of the 25th Captain Steninefsky, with a small force, made a sortie and attempted to disperse a Japanese battery located on "Corner Hill," but without success. This sortie was made from "High Hill." The "Novokrai" adds that the Japanese were building trenches in front of the hills, from "Corner Hill" to "High Hill," but it does not mention the retreat of the Russians from the latter place. The Japanese have about thirty guns, some of them mounted in stone Chinese houses, and others in the foothills along the beach.

In the vicinity of Louisa Bay, northwest of Port Arthur, the Japanese have two hundred guns concealed in a cornfield.

CHEFOO, Aug. 30, 9 p. m.—A junk which left Liaotai Promontory the afternoon of August 28 brings confirmation of the report of fighting at Palichuang on the 26th, making it clear that there had been a fight of several days duration in that section during which both sides lost heavily. The Japanese succeeded in holding their position and mounting guns which, together with those at Chaochanko, exchanged a fierce fire with Russian artillery from two forts in the vicinity of Tapintze.

Chinese who came in by this junk affirm that the Russians are firing daily from Itzshan and Antzshan forts. This may mean that there is another undestroyed fort at Itzshan, or that the Russians have recaptured that position. One of the Chinese declares that he has been engaged for twenty days in carrying Russian dead from the fort near Tapintze.

#### REPORT FROM STOESEL.

ST. PETERSBURG, Aug. 30, 3:57 p. m.—Direct news from Lieutenant General Stoessel, commander of the Russian military forces at Port Arthur, up to August 25 and of a favorable character, has been received here. The Navy, as well as the Army, will share in the Imperial decree, published today, by which the terms of military service for soldiers of the Port Arthur garrison are reduced so that every month served from May last until the end of the year shall count for one year of the full term of service. This is a repetition of what was done at the time of the siege of Sebastopol.

#### INCIDENT OF SIEGE.

CHEFOO, Aug. 30, 8 p. m.—The last issue received here of the Novokrai, the official organ at Port Arthur, contains an account warmly praising the conduct of Captain Lebedieff, commanding the Marines at Zaredouti, who stood on top of a wall, his revolver in one hand and his sword in the other, and killed or wounded twenty odd Japanese, who, mounting on the shoulders of their comrades, attempted to scale the wall. When the Japanese were repulsed Captain Lebedieff sat down and was wiping the perspiration from his face when a shrapnel shell tore his body to pieces.

He soon becomes as lively as the "American kid," has so many ideas and needs so many things to carry out these ideas, and makes so much noise in the process, that frequently mothers come to complain of the kindergartens. The child can no longer be bound down by a high board fence and a rubbish heap. He has rubbed up against the American boy, and is rapidly learning his ways and inclinations.

Aside from the public school training, there are institutions for Chinese and Japanese boys and young men, also for native Hawaiians and other races, maintained by philanthropic Honolulu citizens. All are performing excellent work in building up a citizenship of vital importance to the interests of the United States in the Pacific. The young people of Hawaii, if not their parents, are sincere in their affection for the American flag, and send greetings of "Aloha" ("Love to you") to Uncle Sam and all the children of the great nation to which they now belong.—Howard C. Mohr in Leslie's Weekly.

#### MORGAN TO GIVE UP COPE, FINANCER WHO UNWITTINGLY BOUGHT VESTMENT, WILL RETURN IT.

LONDON, Aug. 29.—One of Cardinal Vanutelli's last acts in London before returning to Rome was to visit the South Kensington Museum. His emissaries wished to inspect there the wonderful bishop's cope of the thirteenth century, which was presented to the Cathedral of Ascoli-Piceno, Italy, by Pope Nicholas IV. The cope had been venerated and admired for 700 years, when it was stolen from the cathedral a year ago.

J. Pierpont Morgan bought the cope and loaned it to the museum for exhibition. He did not know the vestment's history, and of course was ignorant of the circumstances under which it was offered to him. Cardinal Vanutelli identified the cope, and confirmed the statement that it had been stolen.

The Roman Catholic authorities are certain Mr. Morgan will restore the vestment to the owners and custodians. Indeed, it is reliably reported that the moment Mr. Morgan learned that the cope belonged to the cathedral he gave assurances that he would return it there.

ASCOLI, Italy, Aug. 28.—Raffaello Castelli, parish priest at Ascoli, has been arrested as an accomplice in the theft from the Cathedral of Ascoli of a priceless cope, which afterward was bought by J. Pierpont Morgan. It is asserted the arrest of other persons in connection with the theft is imminent.

## FORESTRY MEETING

### A Line Proposed for the Woodland Limits.

(From Thursday's Advertiser.)

The Board of Agriculture and Forestry met in the library of the Experiment Station building yesterday afternoon. The members present were Messrs. Giffard, Brown, Dole and Holloway. Entomologist Craw was also present at the meeting. The first business that came before the board was the ratification of the action of the previous meeting in passing resolutions in regard to the proposed forest reserve in the Hilo district.

These resolutions recommend a very important action on the part of the Territory. They recommend that all the government land above a line following as nearly as possible the 1750 foot contour line shall become a forest reserve. One hundred feet on either side of all streams and about all springs is also to be reserved for the protection of the watercourses. The resolutions direct the Superintendent of Forestry to procure a map of the proposed reserve for presentation to the Governor for it is necessary to obtain his approval of the action. The board does not object to homesteads below the proposed 1750 foot elevation line. The board unanimously voted to ratify the resolutions and a surveyor is to begin at once to prepare a map from data at hand showing the approximate position of the proposed line. The reason that the 1750 foot contour line is not to be strictly adhered to is the fact that it is so crooked that no fence known could adjust itself to the winding course it takes.

The superintendent's report of the work done by the men in the board's employ was placed on file. It was announced by Mr. Giffard, who occupied the chair in the absence of Mr. Thurston, that reports on the citrus and other fruits of the Territory would be published in the form of bulletins shortly. The resignation of Assistant Forester McStocker of the Puna district was accepted and on his recommendation the board appointed John Watt as his successor subject to his acceptance.

The report of Entomologist Alexander Craw was approved and placed on file. Mr. Craw reported that the fumigating boxes at the Oceanic and Hackfeld docks were nearly completed. Fifteen boxes of peaches arriving on the Ventura of August 24th were found to be infested with the peach tree borer and were destroyed. On the Alameda arriving on the 2nd of September were two lots of lemons infested with scale. Although this scale is already in the Territory the importation of such inferior, cull fruit as these lots were is to be discouraged and both lots were destroyed. On the Korea were several cases of Japanese pear which were infested with the Chinese fruit worm, a very dangerous pest which has not appeared in the United States but has gained a foothold at Victoria, B. C. This fruit was all destroyed by fire.

The entomological committee of the board reported that a cablegram had been sent to Mr. Kotinsky, who is an entomologist in the employ of the Department of Agriculture at Washington, D. C., offering him the position of assistant to Mr. Craw to take the places of Messrs. Terry and Kirkaldy, who have resigned to go into the employ of the Planters' Association. Mr. Kotinsky accepted the offer and will arrive in about two weeks.

The question of a general exclusion of fruit from all countries except the United States and Canada was discussed by the board. Mr. Craw did not favor such a sweeping exclusion but thought that the fruit of all countries having fruit flies should be excluded. The suggestion was made that Japan and other eastern countries are so far behind in entomological work that they might not discover the existence of pests. Other members of the board were of the opinion that it was possible for pests to get through the most rigid inspection possible and cited instances of passengers bringing fruit ashore in their pockets. Mr. Giffard did not see why any fruit need be imported from Australia and the Orient when we had the United States so near at hand. We are always notified of pests there and it should be our market.

Mr. Jagger, who is moving the government rock crusher from Koloa to Kapa, Kauai, where it is to be used in the construction of a bridge, took two days to get it over the soft dirt on the new Ali beyond Hanalei.

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